

**BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

Meeting Date: JUNE 18, 2003 Division: TDC

Bulk Item: Yes X No      Department:                     

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**AGENDA ITEM WORDING:**

Approval of an Amendment to Agreement with Artificial Reefs of the Keys for the Vandenberg Project to extend Agreement to March 15, 2004, and allow for additional insurance coverage requirements.

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**ITEM BACKGROUND:**

Extension required to allow time for completion of project.

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**PREVIOUS REVELANT BOCC ACTION:**

BOCC approved original agreement at their meeting of March 22, 2001

BOCC approved amendment to agreement at their meeting of June 19, 2002

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**CONTRACT/AGREEMENT CHANGES:**

Amendment to Extend and provide for additional insurance coverage.

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**STAFF RECOMMENDATIONS:**

Approval

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**TOTAL COST:** \$250,000

**BUDGETED:** Yes X No     


**COST TO COUNTY:** \$250,000/TOURIST PAY

**SOURCE OF FUNDS:** TDC

**REVENUE PRODUCING:** Yes X No      **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty X OMB/Purchasing X Risk Management X

**DIVISION DIRECTOR APPROVAL:**

  
(Lynda Stuart)

**DOCUMENTATION:** Included X To Follow      Not Required     

**DISPOSITION:**                                     

**AGENDA ITEM #** 23

**MONROE COUNTY BOARD OF COUNTY COMMISSIONERS**

**CONTRACT SUMMARY**

Contract with: Artificial Reefs of the Contract #                       
Keys Effective Date:                       
 Expiration Date: 3/15/04  
 Contract Purpose/Description:                     

**Approval of an Amendment to Agreement with Artificial Reefs of the Keys for the Vandenberg Project to extend Agreement to March 15, 2004.**

And allow for additional insurance coverage requirements.

Contract Manager: Maxine Pacini 3523 TDC # 3  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on 6/18/03 Agenda Deadline: 6/3/03

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ 250,000 Current Year Portion: \$                       
 Budgeted? Yes ☒ No ☐ Account Codes: 117-77040-530340-T17M-383Z-530340  
 Grant: \$                                                                                                           
 County Match: \$                                                                                                         

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$           /yr For:                       
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>5/10/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>5/10/03</u>
Risk Management	<u>5/15/03</u>	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<u>Bill [Signature]</u>	<u>5/15/03</u>
O.M.B./Purchasing	<u>5/13/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Sheree A Baker</u>	<u>5/15/03</u>
County Attorney	<u>5/12/03</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>S.Hutton</u>	<u>5/12/03</u>

Comments: Insurance requirements in original contract are inadequate. The navigable waterway exposure brings Jones Act coverage into play. Florida Workers Comp. law does not cover Seaman. It is necessary to provide W.C. and Jones Act coverage. I am attaching documentation explaining the Jones Act and its difference from

OMB Form Revised 2/27/01 MCP #2

Workers Compensation. The contract should also require a watercraft endorsement for the General liability coverage. Specifically... the amendment should include a requirement for Jones Act Coverage and watercraft endorsement for General Liability.

## ADDENDUM TO AGREEMENT

THIS ADDENDUM to agreement dated the \_\_\_\_\_ day of \_\_\_\_\_ 2003, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and Artificial Reefs of the Keys, a Florida not-for-profit corporation.

WHEREAS, there was a contract entered into on March 22, 2001, between the parties, awarding \$250,000 to Artificial Reefs of the Keys for the Vandenberg Project, and

WHEREAS, the contract was amended on June 19, 2002 to allow for an extension of agreement to September 30, 2003, and

WHEREAS, it has become necessary to extend the contract for an additional period of time in order to complete the project; and

WHEREAS, it has become necessary to include additional insurance requirements,

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. Contract period as outlined in Paragraph 1 shall be extended to March 15, 2004.
2. Exhibit A shall be added to the original Agreement to meet the Water Craft Liability Insurance Requirements, and Exhibit B shall be added to original Agreement to meet the Workers Compensation requirements.
3. The remaining provisions of the contract dated March 22, 2001 and Amended June 19, 2002, remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)

ATTEST:

Artificial Reefs of the Keys

\_\_\_\_\_  
President

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

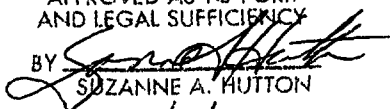
BOARD OF COUNTY  
COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Mayor/Chairman

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

BY

  
SUZANNE A. HUTTON

DATE

5/19/03

**WATER CRAFT LIABILITY  
INSURANCE REQUIREMENTS  
FOR  
CONTRACT \_\_\_\_\_**

**BETWEEN  
MONROE COUNTY, FLORIDA  
AND**

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Prior to the commencement of work governed by this contract, the Contractor shall obtain Water Craft Liability Insurance with terms no less restrictive than those found in the standard "American Institute Hull Clauses" (June 2, 1977 edition). Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Injury (including death) to any Person
- Damage to Fixed or Movable Objects
- Costs Associated with the Removal of Wrecked Vessels
- Contractual Liability with Respect to this Contract

If the policy obtained states that coverage applies for the "Acts or Omissions of a Vessel", it shall be endorsed to provide coverage for the legal liability of the shipowner.

The minimum limits acceptable shall be:

**\$1 Million Combined Single Limit (CSL)**

Coverage provided by a Protection and Indemnity Club (P&I) shall be subject to the approval of the County.

The Monroe County Board of County Commissioners shall be named as Additional Insured on all policies issued to satisfy the above requirements.

**WORKERS' COMPENSATION  
INSURANCE REQUIREMENTS  
FOR  
CONTRACT \_\_\_\_\_**

**BETWEEN  
MONROE COUNTY, FLORIDA  
AND**

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Recognizing that the work governed by this contract involves Maritime Operations, the Contractor's Workers' Compensation Insurance Policy shall include coverage for claims subject to the Federal Jones Act (46 U.S.C.A. subsection 688) with limits not less than those specified for Employer's Liability.

The Contractor shall be permitted to provide Jones Act Coverage through a separate Protection and Indemnity Policy, in so far as the coverage provided is no less restrictive than would have been provided by a Workers' Compensation policy.

**ADDENDUM TO AGREEMENT**

THIS ADDENDUM to agreement dated the 19<sup>th</sup> day of JUNE 2002, is entered into by and between the Board of County Commissioners for Monroe County, on behalf of the Tourist Development Council, and Artificial Reefs of the Keys, a Florida not-for-profit corporation.

WHEREAS, there was a contract entered into on March 22, 2001, between the parties, awarding \$250,000 to Artificial Reefs of the Keys for the Vandenberg Project, and

WHEREAS, it has become necessary to extend the contract for an additional period of time in order to complete the project; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties agree to the amended agreement as follows:

1. Contract period as outlined in Paragraph 1 shall be extended to September 30, 2003.
2. The remaining provisions of the contract dated March 22, 2001, remain in full force and effect.

IN WITNESS WHEREOF, the parties have set their hands and seal on the day and year first above written.

(SEAL)

ATTEST:

Artificial Reefs of the Keys

Joseph P. Heatherly  
President

(SEAL)

ATTEST:

DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY  
COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

Garnet Stanoch  
Deputy Clerk

[Signature]  
Mayor/Chairman

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY.

BY [Signature]  
SUZANNE A. HUTTON

5/7/02

## **GRANT OF FUNDS**

This AGREEMENT dated the 22 day of MARCH 2001, is entered into by and between the BOARD OF COUNTY COMMISSIONERS FOR MONROE COUNTY, hereinafter "County," on behalf of the TOURIST DEVELOPMENT COUNCIL, hereinafter "TDC" and Artificial Reefs of the Keys a Florida not-for-profit corporation, hereinafter "Contractor".

WHEREAS, the third penny of Tourist Development Tax may be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, or promote museums, zoological parks, fishing piers, nature centers or sports arenas which are publicly owned and operated or owned and operated by not-for-profit corporations, and

WHEREAS, Contractor has applied for funding for the Vandenberg project to acquire/remodel/construct the zoological park/nature center hereinafter "the Project"; and

WHEREAS, the County and TDC have determined that it is in the best interest of the County, for purposes of promoting tourism and preserving the heritage of the community, to acquire, construct, repair and rehabilitate the project for use as a zoological park/nature center open to the public;

NOW, THEREFORE, in consideration of the mutual covenants and payments contained herein, the Contractor and the County have entered into this agreement on the terms and conditions as set forth below.

1. AGREEMENT PERIOD. This agreement is for the period March 22, 2001 through September 30, 2002. This agreement shall remain in effect for the stated period unless one party gives to the other written notification of termination pursuant to and in compliance with paragraphs 7, 12 and 13 below.

2. SCOPE OF AGREEMENT. The Contractor shall provide a zoological park/nature center by sinking a vessel with appropriate federal and state permits for the establishment of an artificial reef.

3. AMOUNT OF AGREEMENT AND PAYMENT. The County shall provide an amount not to exceed \$250,000 to be paid upon the completion of the project. The Board of County Commissioners and the Tourist Development Council assume no liability to fund this agreement for an amount in excess of this award. Payment shall be made to Contractor upon presentation of invoice and other documentation necessary to prove that the project has been completed. Monroe County's performance and obligation to pay under this agreement is contingent upon an annual appropriation by the BOCC.

4. REPORTS. The Contractor shall provide financial reports in summary of activity on forms provided or approved by the TDC, and quarterly narrative reports of activity under the approved work plan. The Contractor shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the TDC, the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the Contractor to maintain appropriate records to insure a proper accounting of all funds and expenditures. The Contractor understands that it

shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County, or their agents and representatives. In the event of an audit exception, the current fiscal year grant award or subsequent grant awards will be offset by the amount of the audit exception. In the event the grant is not renewed or supplemented in future years, the Contractor will be billed by the County for the amount of the audit exception and shall promptly repay any audit exception.

5. **MODIFICATIONS AND AMENDMENTS.** Any and all modifications of the terms of this agreement shall be only amended in writing and approved by the Board of County Commissioners for Monroe County.

6. **INDEPENDENT CONTRACTOR.** At all times and for all purposes hereunder, the Contractor is an independent contractor and not an employee of the Board of County Commissioners of Monroe County. No statement contained in this agreement shall be construed as to find the Contractor or any of its employees, contractors, servants or agents to the employees of the Board of County Commissioners of Monroe County, and they shall be entitled to none of the rights, privileges or benefits of employees of Monroe County.

7. **COMPLIANCE WITH LAW.** In carrying out its obligations under this agreement, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provisions of this agreement, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this agreement and shall entitle the County to terminate this agreement immediately upon delivery of written notice of termination to the Contractor.

8. **RESTRICTIONS ON AGREEMENTS ENTERED PURSUANT TO THIS AGREEMENT.** The Contractor shall include in all agreements funded under this agreement the following terms:

a) **Anti-discrimination.** Contractor agrees that they will not discriminate against any employees or applicants for employment or against persons for any other benefit or service under this agreement because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

b) **Anti-kickback.** Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the Contractor has any interest, financially or otherwise, in Contractor. For breach or violation of this warranty, the Contractor shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee. Contractor acknowledges that it is aware that funding for this agreement is available at least in part through the County and that violation of this paragraph may result in the County withdrawing funding for the project.

c) **Hold harmless/indemnification.** Contractor acknowledges that this agreement is funded at least in part by the County and agrees to indemnify and hold harmless the County and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments (collectively claims) arising directly or indirectly from any negligence or criminal conduct on the part of Contractor in the performance of the terms of this agreement. The Contractor shall immediately give notice to the County of any



suit, claim or action made against the Contractor that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related this agreement.

d) Insurance. Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to project occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, exempt workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

e) Licensing and Permits. Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

9. **HOLD HARMLESS/INDEMNIFICATION.** The Contractor hereby agrees to indemnify and hold harmless the BOCC/TDC and any of its officers and employees from and against any and all claims, liabilities, litigation, causes of action, damages, costs, expenses (including but not limited to fees and expenses arising from any factual investigation, discovery or preparation for litigation), and the payment of any and all of the foregoing or any demands, settlements or judgments arising directly or indirectly under this agreement. The Contractor shall immediately give notice to the County of any suit, claim or action made against the County that is related to the activity under this agreement, and will cooperate with the County in the investigation arising as a result of any suit, action or claim related to this agreement.

10. **ANTI-DISCRIMINATION.** The Contractor agrees that they will not discriminate against any of their employees or applicants for employment or against persons for any benefit or service because of their race, color, religion, sex, national origin, or physical or mental handicap where the handicap does not affect the ability of an individual to perform in a position of employment, and to abide by all federal and state laws regarding non-discrimination.

11. **ANTI-KICKBACK.** The Contractor warrants that no person has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, and that no employee or officer of the County or TDC has any interest, financially or otherwise, in the said funded project, except for general membership. For breach or violation of this warranty, the County shall have the right to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

12. **TERMINATION.** This agreement shall terminate on September 30, 2002. Termination prior thereto shall occur whenever funds cannot be obtained or cannot be continued at a level sufficient to allow for the continuation of this agreement pursuant to the terms herein. In the event that funds cannot be continued at a level sufficient to allow the continuation of this agreement pursuant to the terms specified herein, this agreement may then be terminated immediately by written notice of termination delivered in person or by mail to Contractor. The County may terminate this agreement without cause upon giving written notice of termination to provider. The County shall not be obligated to pay for any services or goods provided by Contractor after Contractor has received written notice of termination.

13. **TERMINATION FOR BREACH.** The County may immediately terminate this agreement for any breach of the terms contained herein. Such termination shall take place immediately upon receipt of written notice of said termination. Any waiver of any breach of covenants herein contained to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the County from declaring a forfeiture for any succeeding breach either of the same conditions or of any other conditions. Failure to provide County with certification of use of matching funds or matching in-kind services at or above the rate of request for reimbursement or payment by contractor is a breach of agreement, for which the County may terminate this agreement upon giving written notification of termination.

14. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements with respect to such subject matter between the Contractor and the County.

15. **CONSENT TO JURISDICTION.** This agreement, its performance, and all disputes arising hereunder, shall be governed by the laws of the State of Florida, and both parties agree that the proper venue for any actions shall be in Monroe County.

16. **ETHICS CLAUSE:** Contractor warrants that he has not employed, retained or otherwise had act on his behalf any former County officer or employee in violation of Section 2 or Ordinance No. 10-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 10-1990. For breach or violation of the provision the County may, at its discretion terminate this agreement without liability and may also, at its discretion, deduct from the agreement or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift, or consideration paid to the former or present County officer or employee.

17. **PUBLIC ENTITY CRIME STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on an agreement to provide any goods or services to a public entity, may not submit a bid on a agreement with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Contractor, supplier, sub-contractor, or consultant under a agreement with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

18. **AUTHORITY:** Contractor warrants that it is authorized by law to engage in the performance of the activities encompassed by the project herein described. Each of the signatories for the Contractor below certifies and warrants that the Contractor's name in this agreement is the full name as designated in its corporate charter (if a corporation); they are empowered to act and contract for the Contractor, and this agreement has been approved by the Board of Directors of Contractor or other appropriate authority.

19. **LICENSING AND PERMITS:** Contractor warrants that it shall have, prior to commencement of work under this agreement and at all times during said work, all required licenses and permits whether federal, state, County or City.

20. **INSURANCE:** Contractor agrees that it maintains in force at its own expense a liability insurance policy which will insure and indemnify the Contractor and the County from any suits, claims or actions brought by any person or persons and from all costs and expenses of litigation brought against the Contractor for such injuries to persons or damage to project occurring during the agreement or thereafter that results from performance by Contractor of the obligations set forth in this agreement. At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of the insurance of the carriers showing that the aforesaid insurance policy is in effect. The following coverage's shall be provided:

1. Workers Compensation insurance as required by Florida Statutes.
2. Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Auto Liability Insurance with minimum limits of \$300,000 combined single limit per occurrence.

The Contractor, the County and the TDC shall be named as additional insured, except workers compensation. The policies shall provide no less than 30 days notice of cancellation, non-renewal or reduction of coverage.

At all times during the term of this agreement and for one year after acceptance of the project, Contractor shall maintain on file with the County a certificate of insurance showing that the aforesaid insurance coverage's are in effect.

21. **NOTICE.** Any written notice to be given to either party under this agreement or related hereto shall be addressed and delivered as follows:

For Artificial Reefs of the Keys: Jeff Dey, CEO  
Resource Control Corporation  
103 Wills St.  
Rancocas, NJ 08073

For County: Lynda Stuart  
Monroe County Tourist Development Council  
1201 White Street, Suite 102  
Key West, FL 33040  
and  
Suzanne Hutton, Asst. County Attorney  
310 Fleming St.  
Key West, FL 33040

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

(SEAL)

ATTEST  DANNY L. KOLHAGE, CLERK

By: Sabell C. De Santis

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF MONROE COUNTY, FLORIDA

By: 

Mayor/Chairman

(SEAL)

ATTEST:

By: \_\_\_\_\_

Secretary

Artificial Reefs of The Keys

By: 

President

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY.

BY 

SUZANNE A. HUTTON

DATE 2/26/01